

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

JOSEPH NATHANIEL MCKNIGHT,)

Plaintiff,)

vs.)

LIEUTENANT BROWN; SERGEANT
REED; and OFFICER MILES;)

Defendants.)

C/A No. 3:06-cv-1589-MBS

O R D E R

Plaintiff Joseph Nathaniel McKnight (“Plaintiff”) is an inmate in the custody of the Florence County Detention Center. Plaintiff, appearing *pro se*, brings this action pursuant to 42 U.S.C. § 1983 against Lieutenant Brown, Sergeant Reed, and Officer Miles (“Defendants”). Plaintiff asserts that Defendants violated certain of his rights protected by the First Amendment of the United States Constitution.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Joseph R. McCrorey for pretrial handling. On May 30, 2006, the Magistrate Judge filed a Report and Recommendation in which he recommended that the complaint be dismissed because it duplicates Plaintiff’s prior action in *McKnight v. Brunson, et al.*, 3:06-1413 (D.S.C. 2006). Plaintiff filed an objection to the Report on June 6, 2006.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a *de novo* determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by

the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Plaintiff objects to the Magistrate Judge's Report because he "refuse[s] to let this case go without a fight." Plaintiff alleges that Defendants stole his Quran and that he "is still being violated." Section 1915(a) of Title 28 of the United States Code authorizes a district court to accept for filing, without the payment of costs, lawsuits brought by persons unable to pay such costs, and § 1915(e) authorizes the court to dismiss the suit before it is served under certain circumstances. *See Nasim v. Warden, Md. House of Correction*, 64 F.3d 951, 953-54 (4th Cir. 1995) (en banc). This action duplicates an action arising from the same series of events and alleges many of the same facts as the earlier filed action of *McKnight v. Brunson, et al.*, 3:06-1413 (D.S.C. 2006). In 3:06-1413, Plaintiff alleges that Lieutenant Brown and three other Florence County Detention Center officials stole his Quran. Thus, the present action repeats allegations advanced in another lawsuit and is subject to dismissal. *See Graham v. Riddle*, 554 F.2d 133, 135 (4th Cir. 1977) (finding repetitive complaints subject to dismissal); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988) (finding "[r]epetitious litigation of virtually identical causes of action" subject to dismissal).

Plaintiff's prior action remains pending before the court. Defendants have not yet answered Plaintiff's Complaint in 3:06-1413. The court advises Plaintiff of his right to petition the court to amend his Complaint in 3:06-1413 and add Sergeant Reed and Officer Miles as Defendants to the earlier filed action, should he desire to do so. *See Fed. R. Civ. P. 15(a)* (providing "a party may amend the party's pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires").

The court has thoroughly reviewed the record. The court declines to designate this action as

a “strike” under 28 U.S.C. § 1915(g). The court adopts the remainder of the Magistrate Judge’s Report and Recommendation. Accordingly, the case is **dismissed without prejudice** and **without issuance and service of process**.

IT IS SO ORDERED.

S/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

April 23, 2007